

Serial No. 10/767,723  
Amendment and Response

Docket No. SAIC0098

REMARKS

Upon entry of the foregoing amendment, independent Claims 1, 11 and 21 have been amended to more particularly point out and distinctly claim that which Applicants claim to be their invention.

Claim 1, 11 and 21 have been amended to make clear that the first sensor is positioned in the system at a location adjacent to the scanning zone and positioned such that the first sensor signals the passing of a first portion of the moving target as the first portion passes the first sensor. Support for such amendments exists at pages 8-9, in the drawings, and elsewhere throughout the specification. Further, no new matter has been added.

As a result of these amendments, the undersigned respectfully asserts that all pending claims are in condition for allowance, and, as a result, reconsideration and withdrawal of the outstanding rejections is respectfully requested.

Claims 1-4, 10 and 19-21 stand rejected under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 6,031,890 (Bermbach, et al.). This rejection is traversed. Independent Claims 1, 11 and 21, as now amended, recite positioning a sensor adjacent to a scanning zone and further recite that the sensor send a signal as the first portion of a moving target passes the sensor. The undersigned respectfully asserts that Bermbach, et al. nowhere disclose positioning a sensor at the scanning zone. By contrast, Bermbach, et al. specifically depict, in Figs. 1 and 2, the sensor positioned away from the scanning zone. Additionally, Bermbach, et al. state that the "X-ray monitoring system 5, 7 and 6, 8 is first activated when the front face of the driver cab arrives at the light barrier 9, 10 which is *distinctly beyond the path of the X-ray beams, that is, the light barrier is located downstream of the X-ray source with respect to the direction of the truck advance*". (Emphasis added). See Column 2, lines 47-52. Therefore, Bermbach, et al. nowhere disclose the positioning of a sensor within the scanning zone in a moving target sensing system such that a moving target's position within a scanning zone is reliably detected by a first sensor such that a signal is initiated by the first sensor as the first portion of the moving target

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conclusively passes the first sensor. This distinction is highly significant to assure the safety of the moving target driver situated in the first portion of the moving target.

According to the present invention, the radiation used to inspect and analyze the contents held with the second portion of the moving target will not and cannot be exposed to the moving target until the first portion of the moving target has conclusively and assuredly traversed the scanning zone. This is assured due to the novel positioning of the sensor (first) at the scanning zone, such that the system, in the claimed embodiments, can only be activated when the first portion of the moving target (housing the driver) has cleared the sensor and thus has cleared the scanning zone.

Since Bermbach, et al. nowhere disclose the features of the independent Claims 1, 11 and 21 of the present invention as amended, Bermbach, et al. is an inapplicable reference and this rejection of Claims 1-4, 10 and 19-21 must fail. Reconsideration and withdrawal of this rejection is therefore requested.

Claims 5-7, 12, 13 and 15-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bermbach as applied against Claims 1 and 11, in view of U.S. Patent No. 6,400,795 (Yagi). This rejection is traversed. The Office makes several admissions regarding the failure of both Bermbach, et al. and Yagi disclosing various claimed features of the present invention. The undersigned reserves the right to address these specifics at a later time. For purposes of brevity and clarity, the undersigned emphasizes that Bermbach, et al. is an inapplicable reference for the invention as now claimed. Therefore, Bermbach, et al. is also not available for combination with Yagi or any other reference. As a result, the rejections made under 35 U.S.C. §103(a) using Bermbach, et al. as a primary reference must fail, and reconsideration and withdrawal of this rejection is respectfully requested.

For completeness, the undersigned further asserts that Yagi merely teaches a X-ray fluorescence analyzer for use in elemental analyses. However, Yagi nowhere discloses or suggests the present invention as claimed: namely, an automated target inspection system for inspecting a moving target comprising: (1) a scanning zone comprising a radiation source and a radiation source detector; (2) a first sensor component positioned at a location adjacent to the

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scanning zone for automatically sensing when a first portion of the moving target has passed through the scanning zone and a second portion of the moving target is about to enter the scanning zone, wherein after the target has passed the first sensor component, the first sensor component sends a signal to the automated target inspection system to initiate a scan of the second portion upon sensing that the second portion of the target is about to enter the scanning zone; and, (3) a shutter, triggered by a signal from the first sensor component, for allowing radiation from the radiation source to pass through the scanning zone in the direction of the radiation detector when the second portion of the moving target is passing through the scanning zone and for closing off the radiation when the second portion of the moving target is no longer within the scanning zone.

Indeed, Yagi nowhere discloses or suggests the use of a X-ray analyzer for purposes of investigating a moving target, nor does Yagi disclose or suggest the use of a X-ray analyzer in an operation where a moving target has only a restricted portion being analyzed. Since these features are not disclosed or suggested by Yagi, Applicants assert that Yagi is an inapplicable reference that should not be available for combination with Bermbach, et al. In the absence of evidence that suggests the desirability of combining references in a proposed manner, such combination is not available to preclude patentability under 35 U.S.C. §103(a). *King Instrument Corp. v. Otari Corp.*, 767 F.2<sup>nd</sup> 853, 226 U.S.P.Q. 402 (Fed. Cir. 1985).

The Office has made further obviousness rejections of Claims 6, 7 and 17, and also Claims 12 and 13 based upon only the Office's assertions that the features of these present claims as originally filed would have been obvious to one of ordinary skill in the art at the time the invention was made. In these rejections, the Office admits that neither Bermbach nor Yagi suggest the features of these claims. As a result, the undersigned traverses these rejections and requests that the Office provide objective evidence to supplant the unsupportable assertions. Reconsideration and withdrawal of these unsupported obviousness rejections is therefore requested.

Finally, Claims 8, 9 and 14 stand rejected under 35 U.S.C. §103(a) as "being unpatentable over Bermbach, as applied to claims 1 and 11 above, in view of Adolph (U.S.

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Patent No. 6,649,906)". This rejection is traversed. The Office admits that "Bermbach does not specifically disclose a second sensor component for detecting radiation outside of the scanning region and shutting off the radiation source in the event that such radiation is detected by the second sensor component."

Adolph, et al. disclose a "downhole" measurement device for detecting radiation during well-drilling operations. The undersigned respectfully asserts that Adolph, et al. nowhere disclose or suggest the invention as claimed, nor do they disclose or suggest any subject matter found in the "primary" reference, Bermbach, et al. As such, Adolph, et al. is an inapplicable secondary reference and has been improperly combined with Bermbach, et al. Elements of separate prior patents cannot be combined when there is no suggestion of such combination anywhere in those patents. *Panduit Corp. v. Dennison Manufacturing Co.*, 810 F.2<sup>nd</sup> 1561, 1 U.S.P.Q.2<sup>nd</sup> 1593 (Fed. Cir. 1987).

In addition, for reasons already set forth above, Bermbach, et al. is an inapplicable reference for reasons including, but not limited to, the present amendments made to independent Claims 1, 11 and 21 of the present invention. Therefore, Bermbach, et al. is an inapplicable primary reference for use in combination with Adolph, et al. Therefore, reconsideration and withdrawal of this rejection is also respectfully requested.

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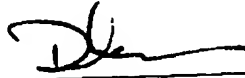
CONCLUSION

In light of the foregoing, it is respectfully submitted that the pending Claims 1-21, as amended, are in condition for allowance, and a Notice of Allowance is respectfully requested. If there are any issues that can be resolved via a telephone conference, the Examiner is invited to contact the undersigned at 919-420-1734.

Respectfully submitted,

11/22/05  
Date

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